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AFCFTA: A BLESSING OR A CURSE TO NIGERIA

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After a lot of grandstanding, Nigeria on 7th July 2019 appended her signature and engendered the coming into force of the African Continental Free Trade Area Agreement (**'AfCFTA'**), which had earlier been ratified by 22 (twenty-two) African Union (AU) member States on 30th May 2019. AfCFTA is one of the bold and ambitious initiatives that seek to unbundle the economic potential of African countries by eliminating tariffs and non-tariff barriers (e.g. permits, licenses, burdensome customs procedures etc.) to intra-African trade, facilitate free movement of persons and investments, create a more competitive, yet sustainable environment for cross-border trade and progressively liberalise trade in services.

The AfCFTA Agreement establishes a single continental market, of 1.2 billion people with a cumulative GDP of over $2.5 trillion across 55 member States of the AU, for the free movement of goods and services within the African continent. Prior to the establishment of the AfCFTA, businesses faced higher tariffs, with an average tariff of 6.1%, when they export within Africa than when they export outside it.

Notwithstanding its fanciful objectives, the overarching question is the possible implications of AfCFTA on the Nigerian economy and businesses, all of which shall be considered in this article.

Key Provisions of the AfCFTA Agreement

1. *Protocol on Trade in Goods*

The Protocol on Trade in Goods creates a framework for the general obligations of member States to negotiate and adopt national schedules of tariff concessions[1] that is to be negotiated and adopted by State Parties, provided that State Parties that are members of other Regional Economic Communities ('REC'), which have agreed among themselves higher levels of elimination of customs duties and trade barriers than those agreed under the Protocol, shall maintain those higher levels of trade liberalisation among themselves.[2]

A key provision under the Protocol on trade in goods is that a member State should treat imported products from other member States, once they have cleared customs, as if they were domestically produced. However, differential treatment over the elimination of duties will be permitted where the States are at different levels of economic development.

Fundamentally, the Protocol contains anti-dumping provisions which allow State Parties to adopt countervailing measures where there is sudden surge of import of a product into the country at the detriment of domestic producers of competing products within the country.[3]

2. *Protocol on Trade in Services*

The Protocol on Trade in Services[4] creates a framework for State Parties to negotiate and adopt national schedules of specific commitments to enhance competitiveness of services, foster domestic and foreign investment, progressively liberate trade in services on the basis of equity, balance and mutual benefit, by eliminating barriers to trade in services. However, the Protocol permits each State Party to regulate and introduce new regulations on services and services suppliers within its territory in order to meet national policy objectives, subject to the regulations not impairing any right and obligations arising under the Protocol. [5]

3. *Protocol on Rules and Procedures on the Settlement of Disputes*

This protocol comprises a framework for the settlement of disputes under the AfCFTA. It establishes a Dispute Settlement Body ('the DSB')[6] and an Appellate Body (AB), comprising representatives of Member States, that will administer issues arising between State Parties concerning their rights and obligations provided under the AfCFTA Agreement. The DSB is empowered to interpret and apply all AfCFTA legal instruments and determine State Parties' rights and obligations under those legal instruments and the AB assumes the role of hearing appeals from the DSB. Under the Protocol, the DSB and AB are expected to give recommendations and rulings upon hearing disputes including the temporal suspension of concessions granted to other State Parties.[7]

[1] Article 8(1) of the Protocol on Trade in Goods, African Continental Free Trade Area Agreement
[2] Article 8(2) ibid
[3] Article 17(1) ibid
[4] Trade in Services is defined under Article 1 (p) of the Protocol on Trade in Goods, African Continental Free Trade Area Agreement to mean the supply of service:

[5] Article 8 of the Protocol on Trade in Services, African Continental Free Trade Area Agreement
[6] Article 5(1) of the Protocol on Rules and Procedure on the Settlement of Disputes, African Continental Free Trade Agreement.
[7] Article 5(3)(d) ibid

Benefits of the AfCFTA to the Nigerian Economy

Further to the implementation of the AfCFTA, some benefits that the AfCFTA would bring to the Nigerian economy are summarised below:

- the elimination of tariff and non-tariff barriers will grant Nigerian Businesses access to the continental market for the export of goods and services to other member states at a reduced cost;
- Nigeria will secure a more balanced and sustainable export base by moving away from extractive commodities, such as oil and minerals, which has traditionally accounted for most of Nigeria's exports;
- manufacturers and producers will benefit from economies of scale and have access to cheaper raw materials and intermediate inputs;
- improve competition in the quality of good and services;
- job creation and reduction in the high unemployment rate;
- provide an expanded platform for Small and Medium Enterprises (SMEs) integration into the regional and continental value chains and accelerate women's empowerment;
- the dispute resolution mechanism provided under the AfCFTA will stop hostile and discriminatory treatment directed against Nigerians and Nigerian Businesses in other African countries; and
- progressive liberization of the service sectors.

Challenges of the AfCFTA on the Nigerian Economy

Despite the many advantages that Nigeria can gain from subscribing to the AfCFTA, there are a number of obstacles that the Nigerian government must overcome in order to take full advantage of the opportunities that the AfCFTA has to offer.

The biggest challenge the government would face is the decline in tariff revenue as a result of the elimination of tariffs and duties on imported products, which has long been a considerable source of income for the government. Considering Nigerian's high dependency on imported goods, other signatory countries may afford to import goods into Nigeria and sell at prices lower than Nigerian made goods. This could result in local businesses being unable to compete with the low prices as Nigerians may eventually settle for the cheaper foreign alternative.

Likewise, the country's over dependence on one resource (i.e. crude oil) has caused the manufacturing sector to be weak. The government's inability to transform the primary/commodity-based economy into a secondary/manufacturing economy is a major reason why Nigeria may not benefit much from the AfCFTA. Nigeria would simply remain a market for other member State producers rather than being a competing producer. Consequently, member States with a stronger manufacturing sector will experience significant economic growth, whilst Nigeria will face substantial fiscal revenue losses.

Another major concern would be the smuggling and dumping of goods that may hurt local businesses and infant industries. An influx of sub-standard goods into the market would cause a loss of revenue for businesses that may result in loss of jobs and would ultimately affect the economy. Although, the protocol in trade in goods makes provisions for anti-dumping provisions which would allow Nigeria to adopt countervailing measures to prevent the dumping of goods, the government would need to fortify its borders and thoroughly inspect imported products before they are admitted into the market. They must also ensure that the Rules of Origin are obeyed such that trans-shipment and under-declaration of added value addition and local content do not occur.

In addition, the lack of adequate infrastructure (i.e. ports, roads, transportation system, tariff policy, etc) to allow goods to be exported smoothly outside the country would affect local businesses. The lack of access to electricity and access to credit would mean that companies would need to source and generate their own energy, which raises the cost of production to uncompetitive levels.

It is also important to note that based on Nigeria's poor record of enforcing laws and treaties, it is likely that the lackadaisical actions of the government will frustrate the proper implementation of the AfCFTA.

Implications of the Provisions of the AfCFTA Agreement on Key Industry stakeholders and Businesses

It is pertinent to note that while the President has ratified the AfCFTA Agreement, it does not have the force of law in Nigeria. Section 12 of the Constitution states that an International treaty or agreement entered into by Nigeria will not have automatic application in the country unless the treaty or agreement has been domesticated by an Act of the National Assembly. In view of the fact that the first trade under the AfCFTA is expected to begin in July 2020, and no timeline has been set for the implementation of the AfCFTA Agreement in Nigeria, it is important to discuss the possible impact of the AfCFTA on key industry stakeholders and businesses.

Presently, each Regional Economic Community (REC) within the AU is expected to participate in a negotiation process to designate goods that will be subject to liberalization. The result of this negotiation process is a listing of tariff lines that would be liberalized and those that would not. This listing will be contained in what the AfCFTA calls the 'Schedule of Tariff Concessions' and will form part of the Agreement. Based on current negotiations, 90% of products are to be liberalised and the sensitive products are to be liberalised over a longer time period. Although, negotiations are still ongoing on categorization of goods and services, RECs are expected to finalize and submit the tariff concession schedule as follows: 90% of non-sensitive tariff lines by September 2019, 7% of sensitive tariff lines by November 2019 and a final schedule of offerings by January 2020. Thus, based on the fact that not all goods and services will be liberalised, the impact on specific industries and businesses in Nigeria will ultimately depend on the outcome of such ongoing negotiations.

Notwithstanding the above, while some businesses will primarily not be affected once negotiations are concluded and trading begins, all businesses are expected to be affected in the long term-whether or not their goods or service are subject to liberalization.

More importantly, the federal government will need to re-harmonise existing policies and regulations in order for them to be consistent with the AfCFTA, which would significantly affect some businesses and sectors. For example, the government will have to lift import bans on specific product such as cement, tomatoes that were earlier placed to accommodate competitive goods from another member state. Should a member state trade its own product in the Nigerian Market, consumers may be provided with better and cheaper options, which could disrupt any existing monopolies that may be held by other businesses in the market.

Particularly, the agricultural sector is set to experience a significant economic boost. Other than direct job creation, increased trade in agricultural products such as cocoa, groundnut, palm kernel oil, cassava and beans will promote agro-processing and further sectoral linkages with producers and manufacturers in the country and improve welfare.

Ultimately, an enlarged regional market will provide opportunities for increased Foreign Direct Investment (FDI) that can be used to increase productivity, enabling Nigerian companies to penetrate new markets and develop their value chain initiatives in the sectors they respectively run.

Conclusion

Whilst the elimination of tariffs is great, in order to benefit fully from the AfCFTA the Nigerian government would need to strengthen its institutional capacity to ensure that all goods and services to be imported into the country comply with international standards. Also, Nigeria will be better positioned to benefit more from the AfCFTA if it creates a better business environment and improve its internal infrastructural inadequacies especially in areas of power supply and access to credit, which most businesses identify as their top challenges.

KEY CONTACTS:

Inam Wilson
Partner

inam.wilson@templars-law.com

Hasiya Nagode
Associate

hasiya.nagode@templars-law.com